JUDGMENT OF THE COURT (Sixth Chamber)
18 April 2002 *

In Case C-9/00,

REFERENCE to the Court under Article 234 EC by the Korkein hallinto-oikeus (Finland) for a preliminary ruling in the proceedings pending before that court instituted by

Palin Granit Oy

and

Vehmassalon kansanterveystyön kuntayhtymän hallitus,

on the interpretation of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32),

* Language of the case: Finnish.

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, J.-P. Puissochet (Rapporteur), R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Vehmassalon kansanterveystyön kuntayhtymän hallitus, by J. Keskitalo, director of health control, and L. Suonkanta, head of economic affairs,

— the Finnish Government, by E. Bygglin, acting as Agent,

— the Commission of the European Communities, by H. Støvlbaek, acting as Agent, assisted by E. Savia, lawyer,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 17 January 2002,

gives the following

Judgment

1 By order of 31 December 1999, received at the Court on 13 January 2000, the Korkein hallinto-oikeus (Supreme Administrative Court) (Finland) referred to the Court for a preliminary ruling under Article 234 EC one main question and four sub-questions on the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32, hereinafter 'Directive 75/442').

2 Those questions were raised in appeal proceedings challenging the grant of an environmental licence by the Vehmassalon kansanterveystyön kuntayhtymän hallitus (Vehmassalo public-health municipal joint board, hereinafter 'the joint board') to a company, Palin Granit Oy (hereinafter 'Palin Granit'), to operate a granite quarry. Under Finnish law, the municipal authorities are not competent to grant an environmental licence for a landfill and, consequently, the outcome of the main proceedings depends on whether leftover stone resulting from stone quarrying is to be regarded as waste.

Community legislation

3 In the first paragraph of Article 1(a) of Directive 75/442, 'waste' is defined as 'any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard'.

4 In Article 1(c) of that directive, 'holder' is defined as the 'producer of the waste or the natural or legal person who is in possession of it'.

5 Annex I to Directive 75/422, headed 'Categories of waste', includes, under head Q11, '[r]esidues from raw materials extraction and processing (e.g. mining residues, oil field slops, etc.)' and, under head Q16, '[a]ny materials, substances or products which are not contained in the above categories'.

6 The second subparagraph of Article 1(a) of Directive 75/442 provides that the Commission is to draw up 'a list of wastes belonging to the categories listed in Annex I'. Pursuant to that provision, the Commission, by Decision 94/3/EC of 20 December 1993 establishing a list of waste pursuant to Article 1(a) of Directive 75/442 (OJ 1994 L 5, p. 15), adopted the 'European Waste Catalogue' (hereinafter 'the EWC'), which includes *inter alia* '[w]aste resulting from exploitation, mining, dressing and further treatment of minerals and quarrying'. The introductory note in the Annex to Decision 94/3 states that that catalogue 'applies to all wastes, irrespective of whether they are destined for disposal or recovery operations' and that it is a 'harmonised and non-exhaustive list of wastes, that is to say, a list which will be periodically reviewed' but, however, the 'inclusion of a material in the EWC does not mean that the material is a waste in all circumstances' and '[t]he entry [in the list] is only relevant when the definition of waste has been satisfied'.

7 Articles 9 and 10 of Directive 75/442 provide that any establishment or undertaking which carries out the waste disposal operations specified in Annex II A or the waste recovery operations specified in Annex II B to that directive must obtain a permit from the competent authority.

8 The list of disposal operations in Annex II A to Directive 75/442 includes, under head D1, '[d]eposit into or onto land (e.g. landfill, etc.)', under head D12, '[p]ermanent storage (e.g. emplacement of containers in a mine, etc.)' and, under head D15, '[s]torage pending any of the operations in this Annex, excluding temporary storage, pending collection, on the site where it is produced'. The list of recovery operations in Annex II B to the directive includes, under head R13, '[s]torage of materials intended for submission to any operation in this Annex, excluding temporary storage, pending collection, on the site where it is produced'.

9 An exemption from the permit requirement is, however, provided by Article 11 of Directive 75/442, the first paragraph of which states as follows:

'... the following may be exempted from the permit requirement imposed in Article 9 or Article 10:

(a) establishments or undertakings carrying out their own waste disposal at the place of production;

and

(b) establishments or undertakings that carry out waste recovery.

This exemption may apply only:

— if the competent authorities have adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements,

and

— if the types or quantities of waste and methods of disposal or recovery are such that the conditions imposed in Article 4 are complied with'.

10 The 'conditions imposed in Article 4' of Directive 75/442 are that human health is not to be endangered and that the environment is not to be harmed.

National legislation

11 Directive 75/442 was transposed into Finnish law by the Law on waste (1072/1993) which is intended to prevent the production of waste, reduce its hazardous properties, and promote its recovery.

12 Article 3(1) no. 1 of that law defines waste as 'any substance or object which its holder discards or intends or is required to discard'. That definition is

supplemented by a list of substances or objects classified as waste, contained in Annex I to the Decree on waste (1390/1993). That list contains 16 categories, of which Q11 covers 'residues from the extraction or processing of raw materials such as mining residues or oil field slops'.

13 Article 3(1) nos. 10 and 11 of the Law on waste (1902/1993) define recovery as 'any action intended to recover or use the material or the energy contained in the waste' and treatment as 'any activity intended to neutralise and permanently deposit the waste'.

14 According to Article 1 of Decree 1390/1993, the provisions of Law 1072/1993 relating to licences to deposit waste do not apply to the use or treatment at the place of extraction of natural non-hazardous waste produced from the extraction of soil materials.

15 Decision 867/1996 of the Ministry of the Environment, which was adopted pursuant to Law 1072/1993 and lists the most common types of waste and hazardous waste, includes waste resulting from the exploration, extraction, dressing and other treatment of minerals, from stone processing, and from gravel production. According to the introduction to that list, the terminology used therein is based on the EWC and the list is only intended as guidance. An object or substance contained in that list is waste only if it exhibits the characteristics referred to in Article 3(1) no. 1 of Law 1072/1993.

16 According to Article 5 of the Law concerning the environmental licensing procedure (735/1991), as amended by Law 61/1995, the authority which is competent to grant the environmental licence is either the municipal authority or the regional environment centre. Article 1(1) of the Decree on the environmental

licensing procedure (772/1992), as amended by Decree 62/1995, which lists the cases for which the regional environment centre is competent, includes, at no. 14, environmental licence matters concerning landfills.

The main proceedings

17 On 25 November 1994, Palin Granit applied to the joint board for an environmental licence for a granite quarry. That application included a plan for management of the leftover stone and mentioned the possibility of recovering that stone by using it as gravel or filling material. It also stated that the leftover stone from the quarrying, amounting to around 50 000 m^3 per annum, and between 65 to 80% of the total stone quarried, would be stored on an adjacent site. The joint board granted Palin Granit a provisional environmental licence subject to several conditions strengthening the obligation to ensure that the operation of the quarry caused minimal harm to the population and the environment.

18 Seized by the Turan ja Porin lääninhallitus (Turku and Pori Provincial Administration), the Turun ja Porin lääninoikeus (Turku and Pori Administrative Court) held that the leftover stone was waste for the purposes of Law 1072/1993 and that its storage site was a landfill for the purposes of the Decision of the Council of Ministers on landfills (861/1997). The lääninoikeus, finding that, under Finnish law, the Lounais-Suomen ympäristökeskus (the regional environment centre of South-West Finland, hereinafter 'the environment centre') was the competent authority for the granting of environmental licences for landfills, set aside the joint board's decision on the ground that the joint board was not the competent authority.

19 Palin Granit and the joint board brought an appeal before the Korkein hallinto-oikeus challenging the classification of the leftover stone as waste. Palin

Granit submitted that the leftover stone, whose mineral composition was identical to that of the basic rock from which it was quarried, was stored for short periods for subsequent use without the need for any recovery measures and did not pose any risk to human health or the environment. In that respect, it differed from mining by-products which, despite their hazardous nature, have not been classified as waste by national law and case-law. Moreover, according to the first subparagraph of Article 1(2) of Decree 1390/1993, non-hazardous soil waste which is treated at the place of extraction falls within the scope of the Law on substances contained in soil (555/1981) and not within the scope of the rules on waste.

20 Conversely, the environment centre, concurring with an opinion of the Ministry of the Environment, claims that the leftover stone ought to be regarded as waste as long as evidence of reuse of the stone has not been provided.

21 In order to determine which authority is competent to grant Palin Granit the environmental licence sought by it, the Korkein hallinto-oikeus decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'Is leftover stone resulting from stone quarrying to be regarded as waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, having regard to points (a) to (d) below?

(a) What relevance, in deciding the above question, does it have that the leftover stone is stored on a site adjoining the place of quarrying to await subsequent use? Is it relevant generally whether it is stored on the quarrying site, a site next to it or further away?

(b) What relevance does it have that the leftover stone is the same as regards its composition as the basic rock from which it has been quarried, and that it does not change its composition regardless of how long it is kept or how it is kept?

(c) What relevance does it have that the leftover stone is harmless to human health and the environment? To what extent generally is importance to be attached to its possible effect on health and the environment in assessing whether it is waste?

(d) What relevance does it have that the intention is to transfer the leftover stone in whole or in part away from the storage site for use, for example for landfill or breakwaters, and that it could be recovered as such without processing or similar measures? To what extent in this connection should attention be paid to how definite the plans are which the holder of the leftover stone has for such use and to how soon after the leftover stone has been deposited on the storage site the use takes place?'

The main question

22 In the first subparagraph of Article 1(a) of Directive 75/442 waste is defined as 'any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard'. Annex I and the EWC clarify and illustrate that definition, by providing lists of substances and objects which may be classified as waste. However, those lists are only intended as guidance and the classification of a substance or object as waste is, as the Commission rightly

submits, primarily to be inferred from the holder's actions, which depend on whether or not he intends to discard the substances in question. Therefore, the scope of the term 'waste' turns on the meaning of the term 'discard' (Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 26).

23 The term 'discard' must be interpreted in light of the aim of Directive 75/442 which, according to its third recital, is the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste, and Article 174(2) EC, which provides that Community policy on the environment is to aim at a high level of protection and is to be based, in particular, on the precautionary principle and the principle that preventive action should be taken. It follows that the concept of waste cannot be interpreted restrictively (see Joined Cases C-418/97 and C-419/97 *ARCO Chemie Nederland and Others* [2000] ECR I-4475, paragraphs 36 to 40).

24 More specifically, the question whether a given substance is waste must be determined in the light of all the circumstances, regard being had to the aim of Directive 75/442 and the need to ensure that its effectiveness is not undermined (*ARCO Chemie Nederland*, paragraphs 73, 88 and 97).

25 Directive 75/442 does not provide any decisive criteria for determining the intention of the holder to discard a given substance or object. Nevertheless, the Court, which has been asked on a number of occasions for preliminary rulings on whether various substances are to be regarded as waste, has provided a number of indicators from which it may be possible to infer the holder's intent. The classification of leftover stone and the decision as to whether it falls into the category of residues from raw materials extraction, at head Q 11 of Annex I to that directive, must be made having regard to those factors and in the light of the aims of Directive 75/442.

26 The Commission considers that the operations of disposal and recovery of a substance or an object manifest an intention to 'discard' it within the meaning of Article 1(a) of Directive 75/442. Articles 4, 8, 9, 10, and 12 of Directive 75/442 describe those operations as methods of treatment of waste. Those operations include deposit into or onto land, which includes use as landfill material (head D1 of Annex II A), storage pending another disposal operation (head D15 of Annex II A) and storage pending a recovery operation (head R13 of Annex II B). The storage of leftover stone at the place of extraction or at a storage site thus constitutes either a disposal or recovery operation.

27 However, the distinction between waste disposal or recovery operations and the treatment of other products is often difficult to discern. Accordingly, the Court has already held that it may not be inferred from the fact that a substance undergoes an operation referred to in Annex II B to Directive 75/442 that that substance has been discarded and may therefore be regarded as waste (the judgment in *ARCO Chemie Nederland*, paragraph 82). The application of an operation listed in Annex II A or II B to Directive 75/442 therefore does not, of itself, justify the classification of that substance as waste.

28 The joint board and Palin Granit assert that the site where the leftover stone resulting from the operation of the quarry is stored is not a landfill but a deposit for reusable materials, inasmuch as the leftover stone is suitable for use in embankment work or for building harbours and breakwaters.

29 That argument does not preclude the leftover stone from being regarded as waste. In its judgment in *Vessoso and Zanetti* (Joined Cases C-206/88 and C-207/88 [1990] ECR I-1461, paragraph 9), the Court held that the concept of waste does not exclude substances and objects which are capable of economic reutilisation. In Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 *Tombesi and*

Others [1997] ECR I-3561, paragraph 52, the Court also stated that the system of supervision and control established by Directive 75/442, as amended, is intended to cover all objects and substances discarded by their owners, even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or reuse.

30 Neither the fact that the leftover stone has undergone a treatment operation referred to in Directive 75/442 nor the fact that it can be reused thus suffices to show whether that stone is waste for the purposes of Directive 75/442.

31 There are other considerations which are more decisive.

32 At paragraphs 83 to 87 of the judgment in *ARCO Chemie Nederland*, the Court pointed out the importance of determining whether the substance is a production residue, that is to say, a product not in itself sought for a subsequent use. As the Commission observes, in the case at issue in the main proceedings the production of leftover stone is not Palin Granit's primary objective. The leftover stone is only a secondary product and the undertaking seeks to limit the quantity produced. According to its ordinary meaning, waste is what falls away when one processes a material or an object and is not the end-product which the manufacturing process directly seeks to produce.

33 Therefore, it appears that leftover stone from extraction processes which is not the product primarily sought by the operator of a granite quarry falls, in principle, into the category of '[r]esidues from raw materials extraction and processing' under head Q 11 of Annex I to Directive 75/442.

34 One counter-argument to challenge that analysis is that goods, materials or raw materials resulting from a manufacturing or extraction process, the primary aim of which is not the production of that item, may be regarded not as a residue but as a by-product which the undertaking does not wish to 'discard', within the meaning of the first paragraph of Article 1(a) of Directive 75/442, but intends to exploit or market on terms which are advantageous to it, in a subsequent process, without any further processing prior to reuse.

35 Such an interpretation would not be incompatible with the aims of Directive 75/442. There is no reason to hold that the provisions of Directive 75/442 which are intended to regulate the disposal or recovery of waste apply to goods, materials or raw materials which have an economic value as products regardless of any form of processing and which, as such, are subject to the legislation applicable to those products.

36 However, having regard to the obligation, recalled at paragraph 23 of this judgment, to interpret the concept of waste widely in order to limit its inherent risks and pollution, the reasoning applicable to by-products should be confined to situations in which the reuse of the goods, materials or raw materials is not a mere possibility but a certainty, without any further processing prior to reuse and as an integral part of the production process.

37 It therefore appears that, in addition to the criterion of whether a substance constitutes a production residue, a second relevant criterion for determining whether or not that substance is waste for the purposes of Directive 75/442 is the degree of likelihood that that substance will be reused, without any further processing prior to its reuse. If, in addition to the mere possibility of reusing the substance, there is also a financial advantage to the holder in so doing, the likelihood of reuse is high. In such circumstances, the substance in question must

no longer be regarded as a burden which its holder seeks to 'discard', but as a genuine product.

38 In the case at issue, the Finnish Government correctly points out that the only foreseeable reuses of leftover stone in its existing state, for example in embankment work or in the construction of harbours and breakwaters, necessitate, in most cases, potentially long-term storage operations which constitute a burden to the holder and are also potentially the cause of precisely the environmental pollution which Directive 75/442 seeks to reduce. The reuse is therefore not certain and is only foreseeable in the longer term, with the result that the leftover stone can only be regarded as extraction residue which its holder 'intends or is required to discard' within the meaning of Directive 75/442, and thus falls within the scope of head Q 11 of Annex I to that directive.

39 The answer to the main question asked by the national court must therefore be that the holder of leftover stone resulting from stone quarrying which is stored for an indefinite length of time to await possible use discards or intends to discard that leftover stone, which is accordingly to be classified as waste within the meaning of Directive 75/442.

Sub-questions (a) and (d)

40 The Court has already answered sub-question (d) in the course of considering the main question. The uncertainty surrounding the proposed uses of the leftover stone and the impossibility of reusing it in its entirety support the conclusion that

all that stone, and not merely the stone which will not be reused, is to be regarded as waste.

41 In any event, under Article 11 of Directive 75/442, it remains possible for national authorities to lay down rules providing for exemptions from the permit requirement and to grant such exemptions in respect of disposal and recovery operations for certain waste, and for national courts to ensure that those rules are observed in accordance with the aims of Directive 75/442.

42 As regards sub-question (a), it should be observed that, in view of the answer which has just been given to the main question, the place of storage of the leftover stone, whether it be on the quarrying site, at a place next to it or further away, is not relevant to its classification as waste. Similarly, the conditions under which the materials are kept and the length of time for which they are kept do not, of themselves, provide any indication of either their value to the undertaking or the advantages which that undertaking may derive from them. They do not show whether or not the holder intends to discard the materials.

43 With respect to sub-question (b), it must be borne in mind that at paragraph 87 of the judgment in *ARCO Chemie Nederland*, the Court held that the fact that a substance is a production residue whose composition is not suitable for the use made of it or that special precautions must be taken when it is used owing to the environmentally hazardous nature of its composition may constitute evidence that the holder has discarded the substance, or intends or is required to discard it within the meaning of Article 1(a) of Directive 75/442.

44 The fact that the leftover stone has the same composition as the blocks of stone extracted from the quarry and that its physical state does not change may

accordingly render it suitable for the uses which could be made of it. However, that argument would be decisive only if all the leftover stone were reused. There is no doubt that the commercial value of blocks of stone depends on their size, shape and potential uses in the construction sector, qualities which the leftover stone, despite having an identical composition, does not possess. That leftover stone is therefore still production residue.

45 In addition, the risk of environmental pollution posed by unused leftover stone is not mitigated by the fact that its mineral composition is identical to the blocks of stone, inasmuch as that identity does not preclude the need for storage of the leftover material, which is an operation with an impact on the environment.

46 In any event, even where a substance undergoes a full recovery operation and thereby acquires the same properties and characteristics as a raw material, it may nevertheless be regarded as waste if, in accordance with the definition in Article 1(a) of Directive 75/442, its holder discards it, or intends or is required to discard it.

47 As regards sub-question (c), it should be observed that the fact that the leftover stone does not pose any risk to public health or the environment also does not preclude its classification as waste.

48 First of all, Directive 75/442 on waste is supplemented by Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20),

which implies that the concept of waste does not turn on the hazardous nature of a substance.

49 Next, even assuming that the leftover stone does not, by virtue of its composition, pose any risk to human health or the environment, stockpiling such stone is necessarily a source of harm to, and pollution of, the environment, since the full reuse of the stone is neither immediate nor even always foreseeable.

50 Finally, the harmlessness of the substance in question is not a decisive criterion for determining what its holder intends to do with it.

51 The answer to the national court's sub-questions must therefore be that the place of storage of leftover stone, its composition and the fact, even if proven, that the stone does not pose any real risk to human health or the environment are not relevant criteria for determining whether the stone is to be regarded as waste.

Costs

52 The costs incurred by the Finnish Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Korkein hallinto-oikeus by order of 31 December 1999, hereby rules:

1. **The holder of leftover stone resulting from stone quarrying which is stored for an indefinite length of time to await possible use discards or intends to discard that leftover stone, which is accordingly to be classified as waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste.**

2. **The place of storage of leftover stone, its composition and the fact, even if proven, that the stone does not pose any real risk to human health or the environment are not relevant criteria for determining whether the stone is to be regarded as waste.**

Macken Puissochet Schintgen

Skouris Cunha Rodrigues

Delivered in open court in Luxembourg on 18 April 2002.

R. Grass F. Macken

Registrar President of the Sixth Chamber